

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEREK HAVEL,

Plaintiff,

v.

SUNAMERICA SECURITIES, INC.,  
et al.,

Defendants.

No. C 06-4543 PJH

**ORDER DENYING MOTION TO REMAND**

Plaintiff's motion to remand came on for hearing before this court on October 4, 2006. Plaintiff appeared by his counsel Eric A. Grover, and defendants appeared by their counsel John S. Battenfeld. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES the motion as follows and for the reasons stated at the hearing.

This is an action alleging claims under California law for violations of labor laws. Plaintiff Derek Havel asserts that from October 2004 to October 2005, he worked as a "Registered Representative" at defendant SunAmerica Securities, Inc. ("SunAmerica Securities"), pursuant to an "independent contractor" agreement. On June 14, 2006, plaintiff filed the present action as a proposed class action in Contra Costa Superior Court. Defendants are SunAmerica Securities and what is alleged to be its parent corporation, AIG Financial Advisors.

Plaintiff alleges that while the members of the proposed class were considered independent contractors, they were actually employees because their day-to-day activities

1 as "Registered Representatives" were subject to the pervasive control of SunAmerica  
2 Securities. Thus, he asserts, they were entitled to the benefits and protections of the  
3 California Labor Code and orders issued by the Industrial Wage Commission ("IWC").

4 Plaintiff asserts eleven causes of action, nine of which allege violations of the Labor  
5 Code and IWC Orders (failure to pay minimum wage and overtime, and failure to provide  
6 accurate wage statements, adequate meal periods, and adequate rest periods). The  
7 remaining two causes of action assert violation of Business and Professions Code § 17200  
8 – the ninth cause of action, alleging violations of various provisions of the California Labor  
9 Code; and the tenth cause of action, claiming failure to pay overtime in violation of the  
10 federal Fair Labor Standards Act, 29 U.S.C. § 207(a) ("FLSA").

11 On July 26, 2006, defendants removed the case, alleging federal jurisdiction under  
12 the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d), 1453, and 1711-15.  
13 Defendants also alleged federal question jurisdiction under 28 U.S.C. § 1331 (based on the  
14 § 17200 claim premised on violations of the FLSA).

15 Plaintiff now seeks an order remanding the case, arguing that the court lacks subject  
16 matter jurisdiction. Plaintiff asserts that defendants have failed to meet their burden of  
17 showing that the case was properly removed under CAFA. They also contend that there is  
18 no substantial federal question to invoke original jurisdiction under 28 U.S.C.  
19 § 1331.

20 A defendant may remove a civil action filed in state court if the action could have  
21 originally been filed in federal court. 28 U.S.C. § 1441. The removal statutes are construed  
22 restrictively, so as to limit removal jurisdiction. Shamrock Oil & Gas Corp. v. Sheets, 313  
23 U.S. 100, 108-09 (1941); Hofler v. Aetna US Healthcare, 296 F.3d 764, 767 (9th Cir. 2002).  
24 There is a "strong presumption" against removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d  
25 564, 566 (9th Cir. 1992). Doubts as to removability are resolved in favor of remanding the  
26 case to state court. Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th  
27 Cir. 2003).

28 In a motion to remand, the burden of proving the propriety of removal rests with the

1 removing party. United Computer Systems v. AT & T Corp., 298 F.3d 756, 763 (9th Cir.  
2 2002). The district court must remand a case to state court if, at any time before final  
3 judgment, the court determines that it lacks subject matter jurisdiction. 28 U.S.C § 1447(c).

4 This motion involves two main issues – whether the case was properly removed  
5 under CAFA, and whether the case was properly removed on federal question grounds.  
6 As explained at the hearing on plaintiff’s motion, the court finds that the presence of federal  
7 question jurisdiction requires that the motion to remand be DENIED. Accordingly, the court  
8 does not address the question whether the action was properly removed under CAFA.

9 Plaintiff argues that his § 17200 claim does not trigger federal question jurisdiction  
10 under 28 U.S.C. § 1331. A state law claim can implicate federal question jurisdiction when  
11 “a substantial, disputed question of federal law is a necessary element of . . . the well-  
12 pleaded state claim, or the claim is an inherently federal claim articulated in state-law  
13 terms.” Lippitt v. Raymond James Fin. Servs., 340 F.3d 1033, 1042 (9th Cir. 2003)  
14 (quotations and citations omitted).

15 In both the ninth and tenth causes of action, plaintiff alleges that “[d]efendants’ acts  
16 constitute a continuing and ongoing unlawful activity prohibited by the UCL.” Cplt ¶¶ 75,  
17 87. In the tenth cause of action, plaintiff alleges a violation of § 17200 based on “federal  
18 law violations” – specifically, violations of the FLSA. Plaintiff asserts that “[d]efendants  
19 have committed an act of unfair competition under the UCL by failing to pay [overtime pay  
20 required by the FLSA] to [p]laintiff and the members of the putative class.” Cplt. ¶ 89.

21 In the notice of removal, defendants assert that federal question jurisdiction attaches  
22 because the § 17200 claim alleged in the tenth cause of action is based on FLSA overtime  
23 violations. They contend that plaintiff alleges that defendants’ actions are in violation of  
24 FLSA, and does not claim that defendants’ conduct is independently unlawful under  
25 California law. Thus, defendants contend, the complaint raises a claim that is necessarily  
26 federal in character, where the right to relief depends on the resolution of a substantial,  
27 disputed federal question – whether defendants violated the FLSA.

28 In the motion to remand, plaintiff argues that the case was improperly removed,

1 because the allegations that defendants violated § 17200 do not turn on a question of  
2 federal law. Plaintiff submits that the issue is whether defendants engaged in an “unfair”  
3 business practice by failing to pay their Registered Representatives overtime wages.  
4 Plaintiff claims that the complaint alleges that defendants’ practice of failing to pay their  
5 employees overtime wages is an “unfair” business practice, and that it is not necessary that  
6 he allege or prove that defendants’ conduct was “unlawful.”

7 Plaintiff also argues that even if the court finds that it has federal jurisdiction over the  
8 tenth cause of action, the remaining causes of action should be remanded. Plaintiff claims  
9 that the causes of action based on California wage law violations (failure to reimburse  
10 employees for their expenses, forcing employees to purchase company-sponsored  
11 products) do not arise out of the same acts as the underlying tenth cause of action (failure  
12 to pay overtime as required by the FLSA), and that there is therefor no supplemental  
13 jurisdiction over those claims.

14 In opposition, defendants argue that the tenth cause of action under § 17200 is  
15 predicated on the violation of federal law, because it is based on defendants’ alleged  
16 violation of the FLSA. Defendants assert that the tenth cause of action alleges only  
17 “unlawful” conduct – not “unfair” or “fraudulent” conduct. For example, the tenth cause of  
18 action alleges that defendants’ acts “constitute a continuing and ongoing unlawful activity  
19 prohibited by the UCL;” that plaintiff and the members of the class “do not qualify for an  
20 exemption from overtime pay under the FLSA;” that defendants violated the UCL by failing  
21 to pay the required overtime pay;” and that defendants should be required to “disgorge their  
22 illegal gains.” Cplt ¶¶ 87, 88, 89, 91, 94 (emphasis added).

23 Defendants note that the tenth cause of action does not allege wrongful conduct  
24 apart from the failure to pay overtime, and argue that because the “law” that underlies the  
25 claim of “unlawful” conduct is the FLSA – a federal statute – the claim necessarily arises  
26 under federal law. Defendants also contend that the court should exercise supplemental  
27 jurisdiction over plaintiff’s remaining state law claims because they arise out of the same  
28 nucleus of operative fact. Defendants assert that all plaintiff’s claims stem from the same

1 factual question – whether plaintiff was properly classified as an independent contractor to  
2 whom neither state nor federal wage and hour laws apply. Defendants also argue that  
3 plaintiff's claims do not involve a novel or complex issue of state law, noting that California  
4 and federal labor laws require consideration of many of the same factors in determining  
5 whether an individual is an employee or an independent contractor.

6 The court finds that the tenth cause of action states a substantial federal claim,  
7 because it seeks to enforce duties imposed by the FLSA to pay overtime compensation.  
8 Plaintiff's argument that a claim that failure to pay overtime in violation of the FLSA was  
9 "unlawful" should be interpreted as an allegation that the failure to pay overtime was  
10 "unfair" is unavailing. The entire tenth cause of action depends on the assertion that  
11 defendants violated the FLSA. Regardless of whether the failure to pay overtime was also  
12 "unfair," it is pled here as being "unlawful." It was "unlawful" solely because it constituted a  
13 violation of the FLSA. Thus, the tenth cause of action states a substantial federal claim,  
14 and sufficiently supports removal. The motion to remand is DENIED.

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16 **IT IS SO ORDERED.**

17 Dated: October 11, 2006



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19 PHYLLIS J. HAMILTON  
20 United States District Judge  
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